

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 623 OF 2002

BETWEEN:

GLENNITA WHITTAKER

Plaintiff

-and-

JASON COXE

First Defendant

-and-

KATHRINE COXE

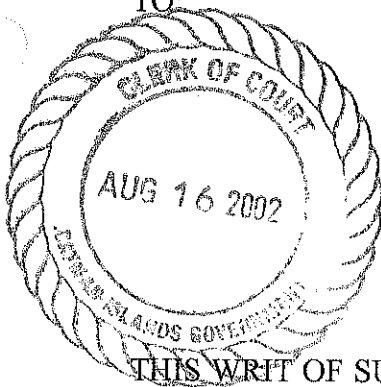
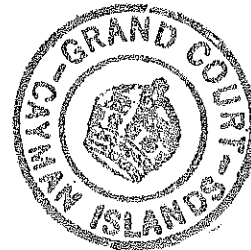
Second Defendant

WRIT OF SUMMONS

TO:

Jason Coxe
P.O. Box 89 GT
George Town, Grand Cayman
Cayman Islands, B.W.I.

Kathrine Coxe
P.O. Box 89 GT
George Town, Grand Cayman
Cayman Islands, B.W.I.



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within fourteen (14) days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, Grand Cayman, Cayman Islands, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this day of August, 2002

NOTE: This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is the registered proprietor and owner of the residential premises at 199 Prospect Drive, George Town, Grand Cayman, Cayman Islands (the "Property"). The Property comprises the home of the Plaintiff and 2 other sections which are let out to tenants.
2. The First and Second Defendants, (Jason and Katherine Coxe, the "Defendants") are partners and carry on business in partnership under the name Coxe's Tools and Equipment, as, inter alia, building contractors.
3. At all material times prior to the events described below the Property possessed an established and attractive garden, albeit that there was a small triangular section at the western end of the Property which would have benefited from being leveled (the "triangular section").
4. By an oral agreement made between the Plaintiff and the First Defendant (on his and on the Second Defendant's behalf) on or about the 20th March 2000, it was expressly agreed between the parties as follows, namely that, for the consideration described below, the Defendants (the First Defendant actually doing the work) would dig out the triangular section, refill and level the same and cover with good quality topsoil.
5. It was further an express term of the said agreement that the Defendants would complete all the above works by the 10th April 2000.
6. The consideration agreed for the above works to be undertaken by the Defendants was that the Defendants would remove and sell for the best price reasonably available the marl which they dug out of the triangular section, keeping 50% of the proceeds of sale for himself and paying the other 50% of the proceeds of sale to the Plaintiff.
7. It was an implied term of the agreement (implied by law) that the Defendants would perform the above works with reasonable care and skill.
8. In breach of agreement, on or about the 23rd of March 2000 (whilst the Plaintiff was away), the Defendants did not perform the works with reasonable care and skill but rather the First Defendant dug out and took away marl from all over the Property and the Defendants (by the First Defendant) committed numerous other breaches of the agreement.

Particulars of Breach

- a) The First Defendant dug up and excavated all over the Property and not just in the triangular area and he removed marl from all such areas;
 - b) The First Defendant dug down and removed marl from a wholly unreasonable depth well below that contemplated in the agreement;
 - c) Prior to the excavation the First Defendant did not remove the trees and decorative plants on the Property. The First Defendant simply dug up and destroyed everything which was growing;
 - d) The First Defendant did not exercise reasonable care and skill in performing the works but rather performed the works so negligently as to cause considerable and serious damage as follows:
 - i) The septic tank on the Property was cracked;
 - ii) The foundation of the property was rendered unstable;
 - iii) The roof and fence of the house on the Property was damaged;
 - iv) The First Defendant dumped debris and garbage into the excavated areas.
9. Thereafter and having removed the marl, the Defendants simply abandoned the works and left and they have not returned.
10. In the premises and in breach of each and every term of the agreement the Defendants have failed to perform the works agreed or at all or to complete the same and the Plaintiff has thereby suffered loss and damage.
11. In further breach of the agreement, the Defendants have failed to pay the 50% of the proceeds of sale of the marl which they removed (or any part thereof) to the Plaintiff. About 3300 cubic yards of marl were removed by the Defendants from the property and sold by them for about CI\$ 15.00 per yard. The Defendants and each of them have therefore received some CI\$50,000.00 for the marl and as accounting parties and/or pursuant to the agreement they are obliged to account to the Plaintiff for the proceeds of sale of the marl and to pay 50% thereof to the Plaintiff.
12. As a result of the said numerous breaches of the agreement the property was left in an extreme state of disrepair. Nearly the entire back lawn of the Property was excavated leaving enormous pits. These pits filled with water and thus created an unsightly and unsafe environment. As a result of the state of the Property left by the Defendants the following occurred:

- i) The Environmental Health Department warned the Plaintiff for creating a public health hazard, as a result of the standing water left in the excavations which created a breeding ground for mosquitoes;
 - ii) Proceedings were brought against the Plaintiff by the tenants of parts of the Property for endangerment to health and breach of contract. These proceedings resulted in the tenants refusing to pay rent and then moving out. This caused damage to the Plaintiff as she lost valuable rental income;
 - iii) As a result of the loss of rental income the Plaintiff was unable to meet her mortgage payments and as a result of this she suffered further loss and damage as she incurred late payment penalties;
 - iv) The excavated areas created an unsafe and hazardous area for dwelling purposes and was unsuitable for the Plaintiff's children.
13. As a result of the above breaches of agreement by the Defendants the Plaintiff suffered from severe distress and anguish and had to seek professional medical care.
14. In addition the Plaintiff was caused loss and damage by the Defendants' breaches of agreement in making good the damage and completing the works:

Particulars.

Fill excavated area on Property	CI\$ 13,368.00
Place Agricultural grade soil - Estimate	CI\$ 2,500.00
Replace Trees and plants that were destroyed - Estimate	CI\$ 2,000.00
Repair external and internal damage roof of Property - Estimate	CI\$ 3,045.00
Repair fence on property and create slab - Estimate	CI\$ 4,077.00
To repair foundation of property - Estimate	CI\$ 5,364.00
Lost rent from Property CI\$ 1,450 x 10 months	CI\$ 14,500.00
Loss of 50% from sale of marl	Estimated at CI\$25,000.00, subject to the accounting party providing details.
Total (Estimated and Actual Costs)	CI\$ 69,854.00

AND THE PLAINTIFF claims:

1. Damages;
2. An account of the proceeds of sale of the marl and an order that the Defendants and each of them do forthwith pay 50% thereof to the Plaintiff;
3. Interest on such sums and for such periods pursuant to the Judicature Law (1995 Revision) at such rate and for such period as the Court thinks fit;
4. Costs to be taxed if not agreed.
5. Further and other relief as the Court feels just

Dated the 15th of August 2002

BROADHURST DaCOSTA
BROADHURST DaCOSTA
Attorneys-at-Law for the Plaintiff

This Statement of Claim was filed by Broadhurst DaCosta, Attorneys-at-law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503, George Town, Grand Cayman, Cayman Islands, B.W.I.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (14) days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not endorsed on the Writ, the defence need not be served until fourteen (14) days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for fourteen (14) days after his Acknowledgement, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (14) days for acknowledging service, a Writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a FIRM and an Attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁶²³ OF 2002

BETWEEN:

GLENNITA WHITTAKER

Plaintiff

-and-

JASON COXE

First Defendant

-and-

KATHRINE COXE

Second Defendant

ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important

Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

-
1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

 2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)
Yes [] No []

 3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)
Yes []

Service of the Writ is acknowledged accordingly

(Signed) _____
[Attorney] for
[Defendant in Person]
Address for service:

Please see overleaf.....

Notes on address for service

Attorney: where the Defendant is represented by an Attorney, state the Attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign Attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Endorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

BROADHURST DaCOSTA
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BRITISH WEST INDIES

Endorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.

[Empty box for Defendant's Attorney endorsement]